

EXHIBIT 1

State of Alabama Unified Judicial System Form ARCiv-93 Rev. 5/99	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Case Number: 01-CV-2010-562180-00 Date of Filing: 06/21/2010 <div style="text-align: right;"> ELECTRONICALLY FILED 6/21/2010 1:20 PM CY 2010-902180.00 CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA ANNE-MARIE ADAMS, CLERK </div>
GENERAL INFORMATION		
IN THE CIRCUIT OF JEFFERSON COUNTY, ALABAMA SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL		
First Plaintiff: <input checked="" type="checkbox"/> Business <input type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other		
First Defendant: <input checked="" type="checkbox"/> Business <input type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other		
NATURE OF SUIT:		
TORTS: PERSONAL INJURY <input type="checkbox"/> WDEA - Wrongful Death <input type="checkbox"/> TONG - Negligence: General <input type="checkbox"/> TOMV - Negligence: Motor Vehicle <input type="checkbox"/> TOWA - Wantonnes <input type="checkbox"/> TOPL - Product Liability/AEMLD <input type="checkbox"/> TOMM - Malpractice-Medical <input type="checkbox"/> TOLM - Malpractice-Legal <input type="checkbox"/> TOOM - Malpractice-Other <input type="checkbox"/> TBFM - Fraud/Bad Faith/Misrepresentation <input type="checkbox"/> TOXX - Other: _____	OTHER CIVIL FILINGS (cont'd) <input type="checkbox"/> MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve <input type="checkbox"/> CVRT - Civil Rights <input type="checkbox"/> COND - Condemnation/Eminent Domain/Right-of-Way <input type="checkbox"/> CTMP - Contempt of Court <input type="checkbox"/> CONT - Contract/Ejectment/Writ of Seizure <input type="checkbox"/> TOCN - Conversion <input type="checkbox"/> EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division <input type="checkbox"/> CVUD - Eviction Appeal/Unlawful Detainer <input type="checkbox"/> FORJ - Foreign Judgment <input type="checkbox"/> FORF - Fruits of Crime Forfeiture <input type="checkbox"/> MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition <input type="checkbox"/> PFAB - Protection From Abuse <input type="checkbox"/> FELA - Railroad/Seaman (FELA) <input type="checkbox"/> RPRO - Real Property <input type="checkbox"/> WTEG - Will/Trust/Estate/Guardianship/Conservatorship <input type="checkbox"/> COMP - Workers' Compensation <input checked="" type="checkbox"/> CVXX - Miscellaneous Circuit Civil Case	
TORTS: PERSONAL INJURY <input type="checkbox"/> TOPE - Personal Property <input type="checkbox"/> TORE - Real Property	OTHER CIVIL FILINGS <input type="checkbox"/> ABAN - Abandoned Automobile <input type="checkbox"/> ACCT - Account & Nonmortgage <input type="checkbox"/> APAA - Administrative Agency Appeal <input type="checkbox"/> ADPA - Administrative Procedure Act <input type="checkbox"/> ANPS - Adults in Need of Protective Services	
ORIGIN: F <input checked="" type="checkbox"/> INITIAL FILING R <input type="checkbox"/> REMANDED	A <input type="checkbox"/> APPEAL FROM DISTRICT COURT T <input type="checkbox"/> TRANSFERRED FROM OTHER CIRCUIT COURT	O <input type="checkbox"/> OTHER _____
HAS JURY TRIAL BEEN DEMANDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
RELIEF REQUESTED: <input checked="" type="checkbox"/> MONETARY AWARD REQUESTED <input type="checkbox"/> NO MONETARY AWARD REQUESTED		
ATTORNEY CODE: JOS004	6/21/2010 1:19:31 PM	/s/ JOE ALAN JOSEPH
MEDIATION REQUESTED: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Undecided		



ELECTRONICALLY FILED

6/21/2010 1:20 PM

CV-2010-902180.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK)

Plaintiff,)

v.)

PLASH ISLAND RESORT, LLC, an)

Alabama Limited Liability Company,)

KEITH ROTENBERRY, an Individual,)

LEWIS M. LOCKHART, an Individual,)

RICHARD D. ROWE, an Individual,)

NIKOLAOS MANAKIDES, an Individual,)

RICKEY L. LOCKHART, an Individual,)

WILLIAM R. IVEY, an Individual,)

MICHAEL W. MCCAIN, an Individual,)

CHRISTOPHER ANDREW)

YARBOROUGH, an Individual, DONNA)

S. MARCRUM, As Executrix For The)

ESTATE OF GARY L. MARCRUM SR.,)

and MARCRUM DEVELOPMENT,)

L.L.C., an Alabama Limited Liability)

Company.)

Defendants.)

Case No. _____

COMPLAINT

COMES NOW Plaintiff, Synovus Bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with Coastal Bank and Trust, a Georgia Bank state bank, d/b/a Coastal Bank and Trust ("Synovus" or "Plaintiff") and for its Complaint against defendants Plash Island Resort LLC, ("Plash Island" or "Borrower"), and defendants Keith Rotenberry ("Rotenberry"), Lewis M. Lockhart ("L. Lockhart"), Richard D. Rowe ("Rowe"), Nikolaos Manakides ("Manakides"), Rickey L. Lockhart ("R. Lockhart"), William R. Ivey ("Ivey"), Michael W. McCain ("McCain"), Christopher Andrew Yarborough ("C. Yarborough"), Donna S. Marcrum, as executrix for the Estate of Gary L. Marcrum Sr. (the

"Marcrum Estate"), and Marcrum Development, L.L.C. ("Marcrum Development" and together with Plash Island, Rotenberry, L. Lockhart, Rowe, Manakides, R. Lockhart, Ivey, McCain, C. Yarborough, and the Marcrum Estate, the "Defendants"), states as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff Synovus Bank, is a Georgia chartered bank with its principal place of business in Columbus, Georgia.

2. Upon information and belief, Plash Island is a *Limited Liability Company* organized under the laws of the State of Alabama with its principal place of business in Baldwin County, Alabama.

3. Upon information and belief, Keith Rotenberry is an adult citizen residing in Jefferson County, Alabama.

4. Upon information and belief, Lewis M. L. Lockhart is an adult citizen residing in Jefferson County, Alabama.

5. Upon information and belief, Richard D. Rowe is an adult citizen residing in Shelby County, Alabama.

6. Upon information and belief, Nikolaos Manakides is an adult citizen residing in Shelby County, Alabama.

7. Upon information and belief, Rickey L. Lockhart is an adult citizen residing in Jefferson County, Alabama.

8. Upon information and belief, William R. Ivey is an adult citizen residing in Shelby County, Alabama.

9. Upon information and belief, Michael W. McCain is an adult citizen residing in Jefferson County, Alabama.

10. Upon information and belief, Christopher Andrew Yarborough is an adult citizen residing in Baldwin County, Alabama.

11. Upon information and belief, Gary L. Marcrum, Sr. died on June 13, 2009, and the Marcrum Estate is being administered in the Probate Court in and for Shelby County, Alabama. Donna S. Marcrum is the executrix of the Marcrum Estate and is a resident citizen of the State of Alabama.

12. Upon information and belief, Marcrum Development is a Limited Liability Company organized under the laws of the State of Alabama with its principal place of business in Jefferson County, Alabama.

13. This Court has jurisdiction over this action and venue in this Court is proper.

FACTUAL ALLEGATIONS

The March 2005 Loan:

14. On March 15, 2005, Plash Island executed a promissory note, as amended or renewed from time to time, (collectively the "\$5.4 Million Note") in favor of Synovus pursuant to which Plash Island promised to pay to Synovus the sum of Five Million Four Hundred Thousand and 00/100 Dollars (\$5,400,000.00).

15. Borrower has failed to make payments of principal and interest under the \$5.4 Million Note as and when due, Synovus has accelerated all obligations under the Note and all obligations under the Note are due and payable in full.

16. In connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by Rotenberry whereby Rotenberry unconditionally and absolutely guaranteed repayment of any and all indebtedness owing from the Borrower under the \$5.4 Million Note (the "Rotenberry Guaranty").

17. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by L. Lockhart whereby L. Lockhart unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "L. Lockhart Guaranty").

18. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by Rowe whereby Rowe unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "Rowe Guaranty").

19. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by Manakides whereby Manakides unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "Manakides Guaranty").

20. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by R. Lockhart whereby R. Lockhart unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "R. Lockhart Guaranty").

21. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by Ivey whereby Ivey unconditionally and absolutely guaranteed repayment of any and all

indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "Ivey Guaranty").

22. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by McCain whereby McCain unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "McCain Guaranty").

23. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by C. Yarborough whereby C. Yarborough unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "C. Yarborough Guaranty").

24. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were also guaranteed by the *Guaranty Agreement* executed by Gary L. Marcrum, Sr. ("Marcrum") whereby Marcrum unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "Marcrum Guaranty"). Marcrum is deceased and his obligations under the Marcrum Guaranty constitute obligations of the Marcrum Estate.

25. Also in connection with the \$5.4 Million Note, and as an inducement therefore, all obligations of the Borrower were guaranteed by the *Guaranty Agreement* executed by Marcrum Development L.L.C. ("Marcrum Development" and together with Rotenberry, M. Lockhart, Rowe, Manakides, L. Lockhart, Ivey, McCain, C. Yarborough, and Marcrum, the

"Guarantors") whereby Marcrum Development unconditionally and absolutely guaranteed repayment of any and all indebtedness, obligations, and liabilities owing from the Borrower under the \$5.4 Million Note (the "Marcrum Development Guaranty" and together with the Guaranties executed by Rotenberry, M. Lockhart, Rowe, Manakides, L. Lockhart, Ivey, McCain, C. Yarborough, and Marcrum, the "Guaranty Agreements").

26. Borrower has defaulted under the terms of the \$5.4 Million Note for, among other things, failure to make payment when due.

27. Accordingly, the Guarantors are in default of their obligations under their respective Guaranty Agreements.

28. Pursuant to the \$5.4 Million Note, and related loan documents (the "\$5.4 Million Loan Documents"), upon default, the Borrower and the Guarantors shall be liable for all costs of collecting or attempting to collect on the \$5.4 Million Note, including attorneys fees.

29. The Borrower and the Guarantors have failed and/or refused to pay Synovus the amounts owed under the \$5.4 Million Loan Documents after demand.

30. As of June 16, 2010 the aggregate outstanding balance due under the \$5.4 Million Note, exclusive of attorneys' fees and costs, is \$5,319,468.44. Such amount consists of principal in the amount of \$5,204,941.56, accrued interest in the amount of \$110,526.88 and late fees in the amount of \$4,000.00. Interest continues to accrue at a rate of \$795.20 per diem.

Count One - Breach of \$5.4 Million Note By Borrower

31. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

32. As referenced above, the \$5.4 Million Note has matured and is due and payable in full. Consequently, Plash Island has materially breached the terms of the \$5.4 Million Note for its failure to pay Synovus the amounts owed under the \$5.4 Million Note. Accordingly,

Defendant Plash Island owes Synovus the sum of the principal on the \$5.4 Million Note, plus unpaid interest, late charges, and reasonable attorneys' fees and expenses.

33. Plash Island has failed and/or refused to pay Synovus the amounts owed under the \$5.4 Million Loan Documents after demand.

34. As of June 16, 2010 the aggregate outstanding balance due under the \$5.4 Million Note, exclusive of attorneys' fees and costs, is \$5,319,468.44. Such amount consists of principal in the amount of \$5,204,941.56, accrued interest in the amount of \$110,526.88 and late fees in the amount of \$4,000.00. Interest continues to accrue at a rate of \$795.20 per diem.

WHEREFORE, Synovus demands judgment against Plash Island, jointly and severally with the Guarantors, for the sum of \$5,319,468.44, plus interest, late charges, attorneys' fees, and costs.

Count Two - Unjust Enrichment

35. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

36. Synovus conferred a benefit on Plash Island by lending to it the principal amount of the \$5.4 Million Note.

37. Plash Island has refused to make the required payment of the outstanding balance under the \$5.4 Million Loan Documents despite demand.

38. By retaining the loaned funds, while not remitting payment to Synovus, Plash Island has been unjustly enriched at Synovus' expense.

WHEREFORE, Synovus demands judgment against Plash Island, jointly and severally with the Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Three - Breach of the \$5.4 Million Note Rotenberry Guaranty

39. Synovus adopts, re-alleges, and incorporates the previous paragraphs as if fully set forth herein.

40. Rotenberry executed the Rotenberry Guaranty whereby he unconditionally guaranteed and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

41. Because Plash Island has breached its obligations under the \$5.4 Million Note, Rotenberry is obligated to pay the amounts due and owing thereunder.

42. Rotenberry has failed and/or refused to pay Synovus the amounts owed under the Rotenberry Guaranty after demand.

43. As per the Rotenberry Guaranty, Rotenberry is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against Rotenberry, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Four - Breach of the \$5.4 Million Note L. Lockhart Guaranty

44. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

45. L. Lockhart executed the L. Lockhart Guaranty whereby he unconditionally guaranteed and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note .

46. Because Plash Island has breached its obligations under the \$5.4 Million Note, L. Lockhart is obligated to pay the amounts due and owing thereunder.

47. L. Lockhart has failed and/or refused to pay Synovus the amounts owed under the L. Lockhart Guaranty after demand.

48. As per the L. Lockhart Guaranty, L. Lockhart is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against L. Lockhart, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Five - Breach of the \$5.4 Million Note Rowe Guaranty

49. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

50. Rowe executed the Rowe Guaranty whereby he unconditionally guarantied and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

51. Because Plash Island has breached its obligations under the \$5.4 Million Note, Rowe is obligated to pay the amounts due and owing thereunder.

52. Rowe has failed and/or refused to pay Synovus the amounts owed under the Rowe Guaranty after demand.

53. As per the Guaranty, Rowe is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the Note.

WHEREFORE, Synovus demands judgment against Rowe, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Six - Breach of the \$5.4 Million Note Manakides Guaranty

54. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

55. Manakides executed the Manakides Guaranty whereby he unconditionally guaranteed and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

56. Because Plash Island has breached its obligations under the Note, Manakides is obligated to pay the amounts due and owing thereunder.

57. Manakides has failed and/or refused to pay Synovus the amounts owed under the Manakides Guaranty after demand.

58. As per the Manakides Guaranty, Manakides is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against Manakides, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, a reasonable attorneys' fee, and costs.

Count Seven - Breach of the \$5.4 Million Note R. Lockhart Guaranty

59. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

60. R. Lockhart executed the R. Lockhart Guaranty whereby he unconditionally guaranteed and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

61. Because Plash Island has breached its obligations under the \$5.4 Million Note, R. Lockhart is obligated to pay the amounts due and owing thereunder.

62. R. Lockhart has failed and/or refused to pay Synovus the amounts owed under the R. Lockhart Guaranty after demand.

63. As per the R. Lockhart Guaranty, R. Lockhart is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against R. Lockhart, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Eight - Breach of the \$5.4 Million Note Ivey Guaranty

64. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

65. Ivey executed the Ivey Guaranty whereby he unconditionally guaranteed and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

66. Because Plash Island has breached its obligations under the \$5.4 Million Note, Ivey is obligated to pay the amounts due and owing thereunder.

67. Ivey has failed and/or refused to pay Synovus the amounts owed under the Ivey Guaranty after demand.

68. As per the Ivey Guaranty, Ivey is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against Ivey, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, a reasonable attorneys' fee, and costs.

Count Nine - Breach of the \$5.4 Million Note McCain Guaranty

69. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

70. McCain executed the McCain Guaranty whereby he unconditionally guaranteed and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

71. Because Plash Island has breached its obligations under the \$5.4 Million Note, McCain is obligated to pay the amounts due and owing thereunder.

72. McCain has failed and/or refused to pay Synovus the amounts owed under the McCain Guaranty after demand.

73. As per the McCain Guaranty, McCain is also liable to Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidenced by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against McCain, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Ten - Breach of the \$5.4 Million Note C. Yarborough Guaranty

74. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

75. C. Yarborough executed the C. Yarborough Guaranty whereby he unconditionally guarantied and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

76. Because Plash Island has breached its obligations under the \$5.4 Million Note, C. Yarborough is obligated to pay the amounts due and owing thereunder.

77. C. Yarborough has failed and/or refused to pay Synovus the amounts owed under the C. Yarborough Guaranty after demand.

78. As per the C. Yarborough Guaranty, C. Yarborough is also liable to the Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against C. Yarborough, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Eleven - Breach of the \$5.4 Million Note Marcrum Guaranty

79. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

80. Gary L. Marcrum, Sr. executed the Marcrum Guaranty whereby he unconditionally guarantied and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

81. Gary L. Marcrum, Sr. died on June 13, 2009, and his estate (the "Marcrum Estate") is being probated in the Probate Court in and for Shelby County, Alabama in the matter styled, In the Matter of Gary L. Marcrum, Case No. PR-2009- 000359 (the "Probate Case").

82. Donna S. Marcrum is the executrix of the Marcrum Estate.

83. Because Plash Island has breached its obligations under the \$5.4 Million Note, the Marcrum Estate is obligated to pay the amounts due and owing thereunder.

84. The Marcrum Estate has failed and/or refused to pay Synovus the amounts owed under the Marcrum Guaranty after demand.

85. As per the Marcrum Guaranty, the Marcrum Estate is also liable to the Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against the Marcrum Estate, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs.

Count Twelve - Breach of the \$5.4 Million Note Marcrum Development Guaranty

86. Plaintiffs adopt, re-allege, and incorporate the previous paragraphs as if fully set forth herein.

87. Marcrum Development executed the Marcrum Development Guaranty whereby it unconditionally guarantied and promised to pay Synovus any and all indebtedness of Plash Island owing to Synovus under the \$5.4 Million Note.

88. Because Plash Island has breached its obligations under the \$5.4 Million Note, Marcrum Development is obligated to pay the amounts due and owing thereunder.

89. Marcrum Development has failed and/or refused to pay Synovus the amounts owed under the Marcrum Development Guaranty after demand.

90. As per the Marcrum Development Guaranty, Marcrum Development is also liable to the Synovus for attorneys' fees incurred in connection with the collection of the indebtedness evidence by the \$5.4 Million Note.

WHEREFORE, Synovus demands judgment against Marcrum Development, jointly and severally with the Borrower and the other Guarantors, for the sum of the principal owed on the \$5.4 Million Note, plus interest, late charges, attorneys' fees, and costs. Synovus also prays for *such other, further, and different relief* as this Court deems just and proper.

/s/Joe A. Joseph

Joe A. Joseph (JOS004)

Damon P. Denney (DEN019)

Clifton C. Mosteller (MOS035)

Attorneys for Plaintiff SYNOVUS BANK

OF COUNSEL:

BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 251-3000
Facsimile: (205) 458-5100

PLAINTIFF REQUESTS THE FOLLOWING DEFENDANTS BE SERVED THE SUMMONS AND COMPLAINT VIA SPECIAL PROCESS SERVER PURSUANT TO RULE 4(i)(1)(B) OF THE ALABAMA RULES OF CIVIL PROCEDURE:

Plash Island Resort LLC
c/o Joseph F Yarborough, Jr.
396 West 23rd Avenue
Gulf Shores, AL 36542

Michael W. McCain
4606 Rudd School Road
Pinson, AL 35126

Christopher Andrew Yarborough
345 Olde Park Court
Gulf Shores, AL 36542-5714

The Estate of Gary L. Marcrum, Sr.
c/o Donna S. Marcrum, Executrix
604 Queensgate
Birmingham, AL 35242

Marcum Development, L.L.C.
c/o Debra Marcum Massey
1601 Wingfield Drive
Birmingham, AL 35242

**PLAINTIFF REQUESTS THE FOLLOWING DEFENDANTS BE SERVED THE
SUMMONS AND COMPLAINT BY CERTIFIED MAIL PURSUANT TO RULE 4(i)(2)
OF THE ALABAMA RULES OF CIVIL PROCEDURE:**

Lewis M. Lockhart
136 5th Avenue
Pleasant Grove, AL 35127

Keith Rotenberry
5240 Vintage Way
McCalla, AL 35111

Richard D. Rowe
915 Greystone Highlands Circle
Birmingham, AL 35242

Nikolaos Manakides
1001 Lupre Drive
McCalla, AL 35111

Rickey L. Lockhart
7539 Lupre Drive
McCalla, AL 35111

William R. Ivey
970 Old Cahaba Drive
Helena, AL 35080

/s/ Joe A. Joseph
Of Counsel

Case Number:
01-CV-2010-902180.00

PLASH ISLAND RESORT LLC, C/O JOSEPH F YARBOROUGH 396 WEST 23RD AVENUE, GULF SHORES, AL 36542

NOTICE TO

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSONNEL AUTHORIZED by the Alabama Rules of the Civil Procedure:

- ☒ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant
- ☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM

/s ANNE-MARIE ADAMS

Date _____

Clerk/Register

By

- ☐ Certified mail is hereby requested
- _____
Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

- ☐ Return receipt of certified mail received in this office on _____
- ☐ I certify that I personally delivered a copy of the Summons and Complaint to _____
- _____ in _____ County, Alabama on _____

Date _____

Server's Signature

State of Alabama
Unified Judicial System
Form C-34 Rev 6/88

**SUMMONS
- CIVIL -**

Case Number:
01-CV-2010-902180.00

**IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL**

MICHAEL W. MCCAIN, 4606 RUDD SCHOOL ROAD, PINSON, AL 35126

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THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSONNEL AUTHORIZED by the Alabama Rules of the Civil Procedure:

☒ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant

☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM

/s ANNE-MARIE ADAMS

Date

Clerk/Register

By

☐ Certified mail is hereby requested

Plaintiffs/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

_____ in _____ County, Alabama on _____

Date

Server's Signature

Case Number:
01-CV-2010-902180.00

CHRISTOPHER ANDREW YARBOROUGH, 345 OLDE PARK COURT, GULF SHORES, AL 36542

NOTICE TO

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

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- ☐ Service by certified mail of this summons is initiated upon the written request of _____
pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM

/s ANNE-MARIE ADAMS

Date _____

Clerk/Register

By

- ☐ Certified mail is hereby requested

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

- ☐ Return receipt of certified mail received in this office on _____
- ☐ I certify that I personally delivered a copy of the Summons and Complaint to _____
- _____ in _____ County, Alabama on _____

Date _____

Server's Signature

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS - CIVIL -	Case Number: 01-CV-2010-902180.00
-----------------------------------------------------------------------	------------------------------------	---------------------------------------------

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

DONNA S. MARCRUM, AS EXECUTRIX FOR THE ESTATE OF GARY L. MARCRUM, SR., 604 QUEENSGATE, BIRMINGHAM, AL 35242

NOTICE TO _____

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

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6/21/2010 1:20:26 PM
 Date

/s ANNE-MARIE ADAMS
 Clerk/Register

 By

☐ Certified mail is hereby requested _____

Plaintiffs/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____
☐ I certify that I personally delivered a copy of the Summons and Complaint to _____
 _____ in _____ County, Alabama on _____

 Date

 Server's Signature

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS - CIVIL -	Case Number: 01-CV-2010-902180.00
-----------------------------------------------------------------------	------------------------------------	---------------------------------------------

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

MARCRUM DEVELOPMENT, L.L.C., C/O DEBRA MARCRUM MASSEY 1601 WINGFIELD DRIVE, BIRMINGHAM, AL 35242

NOTICE TO _____

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSONNEL AUTHORIZED by the Alabama Rules of the Civil Procedure:

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☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM
 Date

/s ANNE-MARIE ADAMS
 Clerk/Register

 By

☐ Certified mail is hereby requested _____
 Plaintiff's/Attorney's Signature

RETURN ON SERVICE:
☐ Return receipt of certified mail received in this office on _____
☐ I certify that I personally delivered a copy of the Summons and Complaint to _____
 _____ in _____ County, Alabama on _____

 Date

 Server's Signature

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS - CIVIL -	Case Number: 01-CV-2010-902180.00
-------------------------------------------------------------------	------------------------------------	---------------------------------------------

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

KEITH ROTENBERRY, 5240 VINTAGE WAY, MCCALLA, AL 35111

NOTICE TO _____

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

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 pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM
 Date

/s ANNE-MARIE ADAMS
 Clerk/Register

By

☒ Certified mail is hereby requested /s JOE ALAN JOSEPH
 Plaintiffs/Attorney's Signature

RETURN ON SERVICE:
☐ Return receipt of certified mail received in this office on _____
☐ I certify that I personally delivered a copy of the Summons and Complaint to _____
 _____ in _____ County, Alabama on _____

 Date

 Server's Signature

State of Alabama
Unified Judicial System
Form C-34 Rev 5/88

SUMMONS
- CIVIL -

Case Number:
01-CV-2010-902180.00

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

LEWIS M. LOCKHART, 136 5TH AVENUE, PLEASANT GROVE, AL 35127

NOTICE TO

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

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6/21/2010 1:20:26 PM

Date

/s ANNE-MARIE ADAMS

Clerk/Register

By

☒ Certified mail is hereby requested

/s JOE ALAN JOSEPH

Plaintiffs/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

_____ in _____ County, Alabama on _____

Date

Server's Signature

State of Alabama
Unified Judicial System
Form C-34 Rev 6/88

**SUMMONS
- CIVIL -**

Case Number:
01-CV-2010-902180.00

**IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL**

RICHARD D. ROWE, 915 GREYSTONE HIGHLANDS C, BIRMINGHAM, AL 35242

NOTICE TO

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pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM

Date

/s ANNE-MARIE ADAMS

Clerk/Register

By

☒ Certified mail is hereby requested

/s JOE ALAN JOSEPH

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

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Date

Server's Signature

State of Alabama
Unified Judicial System
Form C-34 Rev 6/88

SUMMONS
- CIVIL -

Case Number:
01-CV-2010-902180.00

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

NIKOLAOS MANAKIDES, 1001 LUPRE DRIVE, MCCAALLA, AL 35111

NOTICE TO

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6/21/2010 1:20:26 PM

/s ANNE-MARIE ADAMS

Date

Clerk/Register

By

☒ Certified mail is hereby requested

/s JOE ALAN JOSEPH

Plaintiffs/Attorney's Signature

RETURN ON SERVICE:

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_____ in _____ County, Alabama on _____

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Server's Signature

State of Alabama
Unified Judicial System
Form C-34 Rev 6/88

SUMMONS
- CIVIL -

Case Number:
01-CV-2010-902180.00

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

RICKEY L. LOCKHART, 7539 LUPRE DRIVE, MCCALLA, AL 35111

NOTICE TO

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6/21/2010 1:20:26 PM

Date

/s ANNE-MARIE ADAMS

Clerk/Register

By

☒ Certified mail is hereby requested

/s JOE ALAN JOSEPH

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

_____ in _____ County, Alabama on _____

Date

Server's Signature

State of Alabama
Unified Judicial System
Form C-34 Rev 6/88

**SUMMONS
- CIVIL -**

Case Number:
01-CV-2010-902180.00

**IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL**

WILLIAM R. IVEY, 970 OLD CAHABA DRIVE, HELENA, AL 35080

NOTICE TO

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6/21/2010 1:20:26 PM

/s ANNE-MARIE ADAMS

Date

Clerk/Register

By

☒ Certified mail is hereby requested

/s JOE ALAN JOSEPH

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

_____ in _____ County, Alabama on _____

Date

Server's Signature

A

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS - CIVIL -	Case Number: 01-CV-2010-902180.00
-------------------------------------------------------------------	------------------------------	---------------------------------------------

IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

MICHAEL W. MCCAIN, 4808 RUDD SCHOOL ROAD, PINSON, AL 35126

NOTICE TO

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6/21/2010 1:20:26 PM /s ANNE-MARIE ADAMS
 Date Clerk/Register By

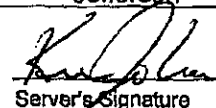
☐ Certified mail is hereby requested _____
 Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☒ I certify that I personally delivered a copy of the Summons and Complaint to Joy McCain, wife of Michael McCain


_____ in Jefferson County, Alabama on _____

June 22, 2010  (205) 243-0681
 Date Server's Signature Due Process, LLC
 130 Inverness Plaza, #336
 Birmingham, AL 35242

01-CV-2010-902180.00
 SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

C001 - SYNOVUS BANK	v.	D008 - MICHAEL W. MCCAIN
Plaintiff		Defendant

FILED IN OFFICE


 01-CV-2010-902180.00 D008

JUL 13 2010
ANNE-MARIE ADAMS
 Clerk

SERVICE RETURN COPY

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RICKEY L. LOCKHART
7538 LUPRE DRIVE
MCCALLA, AL 35111

0006

2. Article Number

(Transfer from service label)

7007 1680 0001 9564 1887

PS Form 3811, February 2004

Domestic Return Receipt

102335-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X **VERA MUNOZ**

☐ Agent☐ Addressee

B. Received by (Printed Name)

Vera Munoz

C. Date of Delivery

6/25/10

D. Is delivery address different from item 1?

☒ Yes

If YES, enter delivery address below:

☐ No

7536 Lupre Drive

CV 10-902180

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address and ZIP+4 in this box •

FILED IN OFFICE

JUN 28 2010

ANNE-MARIE ADAMS, CLERK
ROOM 400 JEFF. CO. COURTHOUSE
716 RICHARD ARRINGTON JR BLVD. NO.
BIRMINGHAM, ALABAMA 35203



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LEWIS M. LOCKHART
136 5TH AVENUE
PLEASANT GROVE, AL 35127

0003

2. Article Number

(Transfer from service label)

7009 1680 0001 9564 1870

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*☐ Agent☒ Addressee

B. Received by (Printed Name)

L. M. Lockhart

C. Date of Delivery

10/25/10

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

CV 10-902180

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

26 JUN 2010 PM 2

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and zip code in this box.

FILED IN OFFICE



JUN 29 2000

ANNE-MARIE ADAMS, CLERK
ROOM 400 JEFF. CO. COURTHOUSE
716 RICHARD ARRINGTON JR BLVD. NO.
BIRMINGHAM ALABAMA 35203

ANNE-MARIE ADAMS
Clerk

13

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>RICHARD D. ROWE 915 GREYSTONE HIGHLANDS C BIRMINGHAM, AL 35242</p> <p><i>D004</i></p> <p></p>		<p>B. Received by (Printed Name) Richard D. Rowe</p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7009 1680 0001 9564 0620</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>CV 10-902180</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

102595-02-M-1840

BLACKBURN, J. A. 42-250

2025 RELEASE UNDER E.O. 14176

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

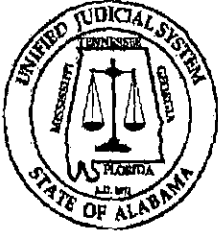
• **Sender:** Please print your name, address, and Zip in this box

CLERK
COURTHOUSE
STON JR BLVD. NO.
MA 35203

ANNE-MARIE ADAMS, CLERK
ROOM 400 JEFF. CO. COURTHOUSE
716 RICHARD ARRINGTON JR BLVD. NO.
BIRMINGHAM, ALABAMA 35203

13

XXXXXXXXXXXXXXXXXXXXXXXXXXXX



NOTICE TO CLERK

REQUIREMENTS FOR COMPLETING SERVICE BY
CERTIFIED MAIL

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

01-CV-2010-902180.00

To: CLERK BIRMINGHAM
clerk.birmingham@alacourt.gov

TOTAL POSTAGE PAID FOR CERTIFIED MAIL: \$86.94

Parties to be served by Certified Mail - Return Receipt Requested

Parties to be served by Certified Mail - Restricted Delivery - Return Receipt Requested

KEITH ROTENBERRY
5240 VINTAGE WAY
MCCALLA, AL 35111

Postage: \$10.99

7009 1680 0001 9564 0774

LEWIS M. LOCKHART

Postage: \$10.99

138 5TH AVENUE
PLEASANT GROVE, AL 35127

7009 1680 0001 9564 1870

RICHARD D. ROWE

Postage: \$10.99

915 GREYSTONE HIGHLANDS C
BIRMINGHAM, AL 35242

7009 1680 0001 9564 0620

NIKOLAOS MANAKIDES

Postage: \$10.99

1001 LUPRE DRIVE
MCCALLA, AL 35111

7009 1680 0001 9564 0637

RICKEY L. LOCKHART

Postage: \$10.99

7539 LUPRE DRIVE
MCCALLA, AL 35111

7009 1680 0001 9564 1887

WILLIAM R. IVEY

Postage: \$10.99

870 OLD CAHABA DRIVE
HELENA, AL 35080

7009 1680 0001 9564 0743

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

KEITH ROTENBERRY
5240 VINTAGE WAY
MCCALLA, AL 35111

D002

2. Article Number

(Transfer from service label)

7009 1680 0001 9564 0774

PS Form 3811, February 2004

Domestic Return Receipt

102699-02-00-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature


☐ Agent☐ Addressee

B. Received by (Printed Name)

Keith Rotenberg

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

CN 10 902180

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

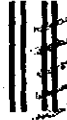
4. Restricted Delivery? (Extra Fee)

☒ Yes

UNITED STATES POSTAL SERVICE

BIRMINGHAM, AL 352

26 JUN 2010 PM 5:1



First-Class Mail
Postage & Fees Paid
USPS
Permit No. 6-10

FILED IN OFFICE

• Sender: Please print your name, address, and ZIP+4 in the box.

JUN 23 2010

ANNE-MARIE ADAMS
Clerk

ANNE-MARIE ADAMS, CLERK
ROOM 400 JEFF. CO. COURTHOUSE
716 RICHARD ARRINGTON JR BLVD. NO.
BIRMINGHAM, ALABAMA 35203

12



SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WILLIAM R. IVEY
970 OLD CAHABA DRIVE
HELENA, AL 35080

2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature


☐ Agent☒ Addressee

B. Received by (Printed Name)

William Ivey

C. Date of Delivery

6/30/10

D. Is delivery address different from Item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

CV 10-902180

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

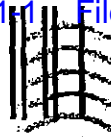
4. Restricted Delivery? (Extra Fee)

☒ Yes

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE
BIRMINGHAM, AL 35203



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

50 JUN 2010 PM 11

• Sender: Please print your name, address and ZIP+4 in this box •

FILED IN OFFICE

JUL 02 2010

ANNE-MARIE ADAMS, CLERK
ROOM 400 JEFF. CO. COURTHOUSE
716 RICHARD ARRINGTON JR BLVD
BIRMINGHAM, ALABAMA 35203

13



ANNE-MARIE ADAMS, CLERK
JEFFERSON COUNTY CIRCUIT COURT
CIVIL DIVISION - ROOM 409
18 NO. RICHARD ABRINGTON BLVD.
BIRMINGHAM, ALABAMA 35202

JUL 01 2010

ANNE-MARIE ADAMS
Clerk

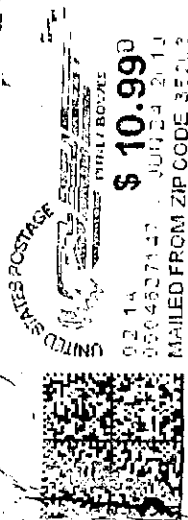


7009 1680 0001 9564 0637

PLEASE RETURN ADDRESS FOLD AT DOTTED LINE

CERTIFIED MAIL

10.99



02 14
9564627127 JUN 24 2010
MAILED FROM ZIP CODE 35202

JUN 25 2010

To: NIKOLAOS MANAKIDES
1001 LUPRE DRIVE
MCCALLA, AL 35111

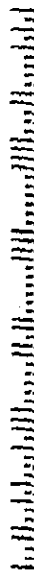
NIXIE

353 DE 1

00 06/27/10

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

BC: 35203010100 *2375-10564-27-20



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>NIKOLAOS MANAKIDES 1001 LUPRE DRIVE MCCALLA, AL 36111</p>		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/></p> <p>X</p> <p>B. Received by / <i>Printed Name</i> <input type="checkbox"/> Address <input type="checkbox"/></p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. Article Number <i>(Transfer from service label)</i></p> <p>7009 1680 0001 9564 0637</p> <p>PS Form 3811, February 2004 Domestic Return Receipt 102230-02-00-1640</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> O.D.</p> <p>4. Restricted Delivery? <i>(Extra Fee)</i> <input checked="" type="checkbox"/> Yes</p>	

State of Alabama
Unified Judicial System
Form C-34 Rev 6/88

**SUMMONS
- CIVIL -**

Case Number:
01-CV-2010-902180.00

**IN THE CIVIL COURT OF JEFFERSON, ALABAMA
SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL**

MARCRUM DEVELOPMENT, L.L.C., C/O DEBRA MARCRUM MASSEY 1801 WINGFIELD DRIVE, BIRMINGHAM, AL 35242

NOTICE TO

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY JOE ALAN JOSEPH

WHOSE ADDRESS IS 420 NORTH 20TH STREET, SUITE 3400, BIRMINGHAM, AL 35203

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSONNEL AUTHORIZED by the Alabama Rules of the Civil Procedure:

☒ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant

☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of the Civil Procedure

6/21/2010 1:20:26 PM

/s ANNE-MARIE ADAMS

Date

Clerk/Register

By

☐ Certified mail is hereby requested

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☒ I certify that I personally delivered a copy of the Summons and Complaint to Debra Marcum Massey at 2108 Southwind Cir.

Birmingham, AL 35244

in

Shelby

County, Alabama on _____

July 6, 2010

Date

[Signature]
Server's Signature

(205) 243-0681

Due Process, LLC
130 Inverness Plaza, #336
Birmingham, AL 35242

01-CV-2010-902180.00

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL

C001 - SYNOVUS BANK

v. D011 - MARCRUM DEVELOPMENT, L.L.C.

Plaintiff

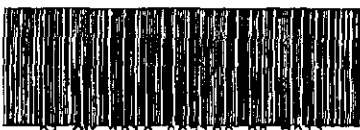
Defendant

FILED IN OFFICE

JUL 13 2010

ANNE-MARIE ADAMS
Clerk

SERVICE RETURN COPY



01-CV-2010-902180.00 D011



ELECTRONICALLY FILED
7/9/2010 4:11 PM
CV-2010-902180.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2010-902180
)	
PLASH ISLAND ONE, LLC, et al.,)	
)	
Defendants.)	

ANSWER TO COMPLAINT

Defendant Marcrum Development L.L.C., an Alabama Limited Liability Company without waiver of its right to contest jurisdiction and/or venue of this action, hereby answers the Complaint as follows:

FIRST DEFENSE

This Defendant denies each and every material allegation of the Plaintiff's complaint and demands strict proof thereof.

SECOND DEFENSE

This Defendant denies it is liable for breach of any promissory note as alleged in Plaintiff's Complaint.

THIRD DEFENSE

This Defendant denies that it is liable for breach of any guaranty as alleged in Plaintiff's Complaint.

FOURTH DEFENSE

This Defendant denies that it is obligated to pay the amounts alleged in Plaintiff's Complaint.

FIFTH DEFENSE

This Defendant pleads and/or reserves the right to assert any and all defenses pursuant to Rule 12(b) of the Alabama rules of Civil Procedure, including lack of jurisdiction over the subject matter, lack of jurisdiction over his person, *improper venue*, *insufficiency of service*, *insufficiency of service of process*, *failure to state a claim upon which relief may be granted*, and *failure to join an indispensable party*, and the affirmative defenses of *lack of consideration*, *lack of standing*, *lack of privity*, *failure to mitigate damages*, *statute of frauds*, *parol evidence rule*, *set-off*, *acquiescence*, *ratification*, *estoppel*, *waiver*, *fraud*, and *misrepresentation*, so as to avoid *waiver of these defenses*.

SIXTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

SEVENTH DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

EIGHTH DEFENSE

This action is more convenient in other forums in other states and/or judicial districts within this State.

NINTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

TENTH DEFENSE

Plaintiff's claims are barred based upon the performance of any obligations owed to Plaintiff by this Defendant.

ELEVENTH DEFENSE

Plaintiff has failed to comply with conditions precedent to seeking payment from this Defendant.

TWELFTH DEFENSE

Plaintiff has not equitably sought recovery of the funds it now claims by attempting to selectively enforce any agreements inuring to the benefit of Plaintiff.

THIRTEENTH DEFENSE

Plaintiff's claims are barred by the equitable doctrine of unclean hands.

FOURTEENTH DEFENSE

Plaintiff's claims are barred by the doctrines of accord and satisfaction, and release of this Defendant.

FIFTEENTH DEFENSE

This Defendant reserves the right to seek indemnity from other parties and nonparties for the defense of this action, as well as indemnity in the event any judgment is entered in favor of Plaintiff and against this Defendant.

SIXTEENTH DEFENSE

This Defendant adopts and incorporates any and all other or different additional or affirmative defenses that may be set forth in the Answer of any other Defendant to the claims asserted by Plaintiff.

SEVENTEENTH DEFENSE

This Defendant reserves the right to amend this Answer to include counterclaims, cross-claims, third-party claims, and/or additional defenses as discovery progresses.

Respectfully submitted,

s/ R. Bruce Barze, Jr.
One of the Attorneys for Marcrum Development,
L.L.C.

OF COUNSEL:

R. Bruce Barze, Jr. (BAR079)
Amy Davis Adams
BALCH & BINGHAM LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, Alabama 35203
(205) 251-8100
(205) 488-5706 fax
bbarze@balch.com
aadams@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of July, 2010, I have caused a copy of the above and foregoing pleading to be served on counsel of record by electronic filing and/or by U.S. First Class Mail, postage prepaid to the following addresses:

Joe A. Joseph
Damon P. Denney
Clifton C. Mosteller
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

and served the following by United States mail, first class, postage prepaid:

Plash Island Resort LLC
c/o Joseph F. Yarborough, Jr.
396 West 23rd Avenue
Gulf Shores, Alabama 36542

Michael W. McCain
4606 Rudd School Road
Pinson, Alabama 35126

Christopher Andrew Yarborough
345 Olde Park Court
Gulf Shores, Alabama 36542-5714

Lewis M. Lockhart
136 5th Avenue
Pleasant Grove, Alabama 35127

Keith Rotenberry
5240 Vintage Way
McCalla, Alabama 35111

Richard D. Rowe
915 Greystone Highlands Circle
Birmingham, Alabama 35242

Nikolaos Manakides
1001 Lupre Drive
McCalla, Alabama 35111

Rickey L. Lockhart
7539 Lupre Drive
McCalla, Alabama 35111

William R. Ivey
970 Old Cahaba Drive
Helena, Alabama 35080

s/ R. Bruce Barze, Jr. _____
Of Counsel



AlaFile E-Notice

01-CV-2010-902180.00

To: R. BRUCE BARZE JR. JR.
bbarze@balch.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

The following answer was FILED on 7/9/2010 4:11:17 PM

Notice Date: 7/9/2010 4:11:17 PM

ANNE-MARIE ADAMS
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: DENNEY DAMON PATRICK
420 20TH ST N STE 3400
BIRMINGHAM, AL 35203

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anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: PLASH ISLAND RESORT LLC (PRO SE)
C/O JOSEPH F YARBOROUGH
396 WEST 23RD AVENUE
GULF SHORES, AL 36542

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205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: ROTENBERRY KEITH (PRO SE)
5240 VINTAGE WAY
MCCALLA, AL 35111

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anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: LOCKHART LEWIS M. (PRO SE)
136 5TH AVENUE
PLEASANT GROVE, AL 35127

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

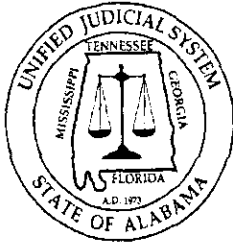
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anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: ROWE RICHARD D. (PRO SE)
915 GREYSTONE HIGHLANDS C
BIRMINGHAM, AL 35242

NOTICE OF ELECTRONIC FILING

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SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
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BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: MANAKIDES NIKOLAOS (PRO SE)
1001 LUPRE DRIVE
MCCALLA, AL 35111

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

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anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: LOCKHART RICKEY L. (PRO SE)
7539 LUPRE DRIVE
MCCALLA, AL 35111

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
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205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: IVEY WILLIAM R. (PRO SE)
970 OLD CAHABA DRIVE
HELENA, AL 35080

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

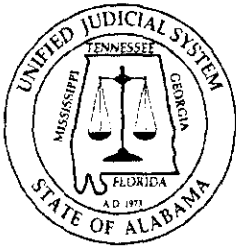
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BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: MCCAIN MICHAEL W. (PRO SE)
4606 RUDD SCHOOL ROAD
PINSON, AL 35126

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
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BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: YARBOROUGH CHRISTOPHER ANDREW (PRO SE)
345 OLDE PARK COURT
GULF SHORES, AL 36542

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

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JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: ESTATE OF GARY L. MARCRUM, SR. DONNA S. MARCRUM, A (F
604 QUEENSGATE
BIRMINGHAM, AL 35242

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

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BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: JOSEPH JOE ALAN
jjoseph@burr.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

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BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: MOSTELLER CLIFTON CHARLES
clifton.mosteller@burr.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

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anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: BARZE RONALD BRUCE JR
bbarze@balch.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

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JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



ELECTRONICALLY FILED

7/9/2010 4:13 PM

CV-2010-902180.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK,

)

)

Plaintiff,

)

)

v.

)

CIVIL ACTION NO. 2010-902180

)

)

PLASH ISLAND RESORT, LLC, et al.,

)

)

Defendants.

)

ANSWER TO COMPLAINT

Defendant Donna S. Marcrum, as executrix of the Estate of Gary L. Marcrum, Sr., without waiver of her right to contest jurisdiction and/or venue of this action, hereby answers the Complaint as follows:

FIRST DEFENSE

This Defendant denies each and every material allegation of the Plaintiff's complaint and demands strict proof thereof.

SECOND DEFENSE

This Defendant denies the estate is liable for breach of any promissory note as alleged in Plaintiff's Complaint.

THIRD DEFENSE

This Defendant denies that the estate is liable for breach of any guaranty as alleged in Plaintiff's Complaint.

FOURTH DEFENSE

This Defendant denies that the estate is obligated to pay the amounts alleged in Plaintiff's Complaint.

FIFTH DEFENSE

This Defendant pleads and/or reserves the right to assert any and all defenses pursuant to Rule 12(b) of the *Alabama rules of Civil Procedure*, including lack of jurisdiction over the subject matter, lack of jurisdiction over his person, improper venue, insufficiency of service, insufficiency of service of process, failure to state a claim upon which relief may be granted, and failure to join an indispensable party, and the affirmative defenses of lack of consideration, lack of standing, lack of privity, failure to mitigate damages, statute of frauds, parol evidence rule, set-off, acquiescence, ratification, estoppel, waiver, fraud, and misrepresentation, so as to avoid waiver of these defenses.

SIXTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

SEVENTH DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

EIGHTH DEFENSE

This action is more convenient in other forums in other states and/or judicial districts within this State.

NINTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

TENTH DEFENSE

Plaintiff's claims are barred based upon the performance of any obligations owed to Plaintiff by this Defendant.

ELEVENTH DEFENSE

Plaintiff has failed to comply with conditions precedent to seeking payment from this Defendant.

TWELFTH DEFENSE

Plaintiff has not equitably sought recovery of the funds it now claims by attempting to selectively enforce any agreements inuring to the benefit of Plaintiff.

THIRTEENTH DEFENSE

Plaintiff's claims are barred by the equitable doctrine of unclean hands.

FOURTEENTH DEFENSE

Plaintiff's claims are barred by the doctrines of accord and satisfaction, and release of this Defendant.

FIFTEENTH DEFENSE

This Defendant reserves the right to seek indemnity from other parties and nonparties for the defense of this action, as well as indemnity in the event any judgment is entered in favor of Plaintiff and against this Defendant.

SIXTEENTH DEFENSE

This Defendant adopts and incorporates any and all other or different additional or affirmative defenses that may be set forth in the Answer of any other Defendant to the claims asserted by Plaintiff.

SEVENTEENTH DEFENSE

This Defendant reserves the right to amend this Answer to include counterclaims, cross-claims, third-party claims, and/or additional defenses as discovery progresses.

Respectfully submitted,

s/ R. Bruce Barze, Jr.

One of the Attorneys for Donna S. Marcrum,
executrix of the Estate of Gary L. Marcrum, Sr.

OF COUNSEL:

R. Bruce Barze, Jr. (BAR079)
Amy Davis Adams
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(205) 251-8100
(205) 488-5706 fax
bbarze@balch.com
aadams@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of July, 2010, I have caused a copy of the above and foregoing pleading to be served on counsel of record by electronic filing and/or by U.S. First Class Mail, postage prepaid to the following addresses:

Joe A. Joseph
Damon P. Denney
Clifton C. Mosteller
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

and served the following by United States mail, first class, postage prepaid:

Plash Island Resort LLC
c/o Joseph F. Yarborough, Jr.
396 West 23rd Avenue
Gulf Shores, Alabama 36542

Michael W. McCain
4606 Rudd School Road
Pinson, Alabama 35126

Christopher Andrew Yarborough
345 Olde Park Court
Gulf Shores, Alabama 36542-5714

Lewis M. Lockhart
136 5th Avenue
Pleasant Grove, Alabama 35127

Keith Rotenberry
5240 Vintage Way
McCalla, Alabama 35111

Richard D. Rowe
915 Greystone Highlands Circle
Birmingham, Alabama 35242

Nikolaos Manakides
1001 Lupre Drive
McCalla, Alabama 35111

Rickey L. Lockhart
7539 Lupre Drive
McCalla, Alabama 35111

William R. Ivey
970 Old Cahaba Drive
Helena, Alabama 35080

s/ R. Bruce Barze, Jr.
Of Counsel



AlaFile E-Notice

01-CV-2010-902180.00

To: R. BRUCE BARZE JR. JR.
bbarze@balch.com

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SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

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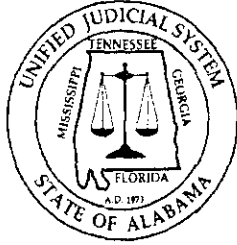
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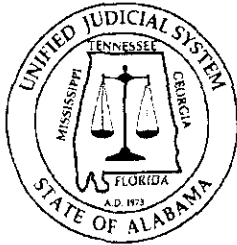
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345 OLDE PARK COURT
GULF SHORES, AL 36542

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Judge: NICOLE GORDON STILL

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D005 MANAKIDES NIKOLAOS

OTHER

C/M- NO SUCH NUMBER

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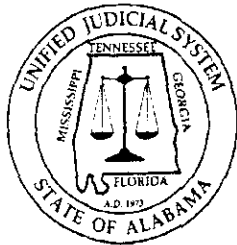
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To: DENNEY DAMON PATRICK
420 20TH ST N STE 3400
BIRMINGHAM, AL 35203

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CV-2010-902180.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK,

Plaintiff,

v.

CV-2010-902180.00

PLASH ISLAND RESORT, LLC, an

Alabama Limited Liability Company,

KEITH ROTENBERRY, an Individual,

LEWIS M. LOCKHART, an Individual,

RICHARD D. ROWE, an Individual,

NIKOLAOS MANAKIDES, an Individual,

RICKEY L. LOCKHART, an Individual,

WILLIAM R. IVEY, an Individual,

MICHAEL W. MCCAIN, an Individual,

CHRISTOPHER ANDREW

YARBOROUGH, an Individual, DONNA

S. MARCRUM, As Executrix For The

ESTATE OF GARY L. MARCRUM SR.,

and MARCRUM DEVELOPMENT,

L.L.C., an Alabama Limited Liability Company.

Defendants.

NOTICE OF APPEARANCE

Comes now Lee R. Benton of the firm Benton and Centeno, LLP and makes known his entry of appearance as counsel for the Defendants Keith Rotenberry, Lewis M. Lockhart, Richard D. Rowe, Nikolaos Manakides, Rickey L. Lockhart, William R. Ivey, Michael W. McCain.

/s/ Lee R. Benton

Lee R. Benton (BEN008)

Amy M. Hazelton (MAY034)

OF COUNSEL:

BENTON & CENTENO, LLP
 2019 Third Avenue North
 Birmingham, Alabama 35203

(205) 278-8000 Telephone
(205) 278-8008 Facsimile
lbenton@bcattys.com
ahazelton@bcattys.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice by electronic filing and/or by first class mail to the following on this the 15th day of July, 2010:

Joe A. Joseph, Esq.
Damon P. Denney, Esq.
Clifton C. Mosteller, Esq.
BURR & FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Attorneys for Plaintiff

Plash Island Resort, LLC
c/o Joseph F. Yarborough, Jr.
396 West 23rd Avenue
Gulf Shores, Alabama 36542

Christopher Andrew Yarborough
345 Olde Park Court
Gulf Shores, Alabama 36542

The Estate of Gary L. Marcum, Sr.
C/o Donna S. Marcum, Executrix
604 Queensgate
Birmingham, Alabama 35242

Marcum Development, LLC
c/o Debra Marcum Massey
1601 Wingfield Drive
Birmingham, Alabama 35242

/s/ Lee R. Benton
Of Counsel



AlaFile E-Notice

01-CV-2010-902180.00

To: LEE R. BENTON
lbenton@bcattys.com

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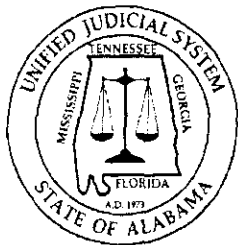
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To: YARBOROUGH CHRISTOPHER ANDREW (PRO SE)
345 OLDE PARK COURT
GULF SHORES, AL 36542

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
01-CV-2010-902180.00

The following NOTICE OF APPEARANCE was FILED on 7/15/2010 4:40:14 PM

Notice Date: 7/15/2010 4:40:14 PM

ANNE-MARIE ADAMS
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JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: JOSEPH JOE ALAN
jjoseph@burr.com

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

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To: MOSTELLER CLIFTON CHARLES
clifton.mosteller@burr.com

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To: BARZE RONALD BRUCE JR
bbarze@balch.com

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CV-2010-902180.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK,)	
)	
Plaintiff,)	
)	
v.)	CV-2010-902180.00
)	
PLASH ISLAND RESORT, LLC, an)	
Alabama Limited Liability Company,)	
KEITH ROTENBERRY, an Individual,)	
LEWIS M. LOCKHART, an Individual,)	
RICHARD D. ROWE, an Individual,)	
NIKOLAOS MANAKIDES, an Individual,)	
RICKEY L. LOCKHART, an Individual,)	
WILLIAM R. IVEY, an Individual,)	
MICHAEL W. MCCAIN, an Individual,)	
CHRISTOPHER ANDREW)	
YARBOROUGH, an Individual, DONNA)	
S. MARCRUM, As Executrix For The)	
ESTATE OF GARY L. MARCRUM SR.,)	
and MARCRUM DEVELOPMENT,)	
L.L.C., an Alabama Limited Liability Company.)	
)	
Defendants.)	

NOTICE OF APPEARANCE

Comes now Amy M. Hazelton of the firm Benton and Centeno, LLP and makes known her entry of appearance as additional counsel for the Defendants Keith Rotenberry, Lewis M. Lockhart, Richard D. Rowe, Nikolaos Manakides, Rickey L. Lockhart, William R. Ivey, Michael W. McCain.

/s/ Amy M. Hazelton
Lce R. Benton (BEN008)
Amy M. Hazelton (MAY034)

OF COUNSEL:

BENTON & CENTENO, LLP
2019 Third Avenue North
Birmingham, Alabama 35203

(205) 278-8000 Telephone
(205) 278-8008 Facsimile
lbenton@bcattys.com
ahazelton@bcattys.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice by electronic filing and/or by first class mail to the following on this the 15th day of July, 2010:

Joe A. Joseph, Esq.
Damon P. Denney, Esq.
Clifton C. Mosteller, Esq.
BURR & FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Attorneys for Plaintiff

Plash Island Resort, LLC
c/o Joseph F. Yarborough, Jr.
396 West 23rd Avenue
Gulf Shores, Alabama 36542

Christopher Andrew Yarborough
345 Olde Park Court
Gulf Shores, Alabama 36542

The Estate of Gary L. Marcrum, Sr.
C/o Donna S. Marcrum, Executrix
604 Queensgate
Birmingham, Alabama 35242

Marcrum Development, LLC
c/o Debra Marcrum Massey
1601 Wingfield Drive
Birmingham, Alabama 35242

/s/ Amy M. Hazelton
Of Counsel



AlaFile E-Notice

01-CV-2010-902180.00

To: AMY MAY HAZELTON
ahazelton@bcattys.com

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BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



AlaFile E-Notice

01-CV-2010-902180.00

To: DENNEY DAMON PATRICK
420 20TH ST N STE 3400
BIRMINGHAM, AL 35203

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AlaFile E-Notice

01-CV-2010-902180.00

To: PLASH ISLAND RESORT LLC (PRO SE)
C/O JOSEPH F YARBOROUGH
396 WEST 23RD AVENUE
GULF SHORES, AL 36542

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To: JOSEPH JOE ALAN
jjoseph@burr.com

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To: MOSTELLER CLIFTON CHARLES
clifton.mosteller@burr.com

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AlaFile E-Notice

01-CV-2010-902180.00

To: BENTON LEE RIMES
lbenton@bcattys.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
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AlaFile E-Notice

01-CV-2010-902180.00

To: BARZE RONALD BRUCE JR
bbarze@balch.com

NOTICE OF ELECTRONIC FILING

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SYNOVUS BANK v. PLASH ISLAND RESORT LLC ET AL
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JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK,

Plaintiff,

v.

CV-2010-902180.00

PLASH ISLAND RESORT, LLC, an
Alabama Limited Liability Company,
KEITH ROTENBERRY, an Individual,
LEWIS M. LOCKHART, an Individual,
RICHARD D. ROWE, an Individual,
NIKOLAOS MANAKIDES, an Individual,
RICKEY L. LOCKHART, an Individual,
WILLIAM R. IVEY, an Individual,
MICHAEL W. MCCAIN, an Individual,
CHRISTOPHER ANDREW
YARBOROUGH, an Individual, DONNA
S. MARCRUM, As Executrix For The
ESTATE OF GARY L. MARCRUM SR.,
and MARCRUM DEVELOPMENT,
L.L.C., an Alabama Limited Liability Company.)

Defendants.)

FILED IN OFFICE

JUL 16 2010

ANNE-MARIE ADAMS
Clerk

ACCEPTANCE OF SERVICE

I, Amy M. Hazelton, of the firm of Benton and Centeno, LLP, being authorized to accept service of process on behalf of Keith Rotenberry, Lewis M. Lockhart, Richard D. Rowe, Nikolaos Manakides, Rickey L. Lockhart, William R. Ivey and Michael W. McCain, do hereby accept service of the Summons and Complaint in the above-styled cause for and on behalf of the said Defendants.

/s/ Amy M. Hazelton

Lee R. Benton (BEN008)

Amy M. Hazelton (MAY034)

OF COUNSEL:

BENTON & CENTENO, LLP
2019 Third Avenue North
Birmingham, Alabama 35203

(205) 278-8000 Telephone
(205) 278-8008 Facsimile
lbenton@bcattys.com
ahazelton@bcattys.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing by electronic filing and/or by first class mail to the following on this the 16th day of July, 2010:

Joe A. Joseph, Esq.
Damon P. Denney, Esq.
Clifton C. Mosteller, Esq.
BURR & FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Attorneys for Plaintiff

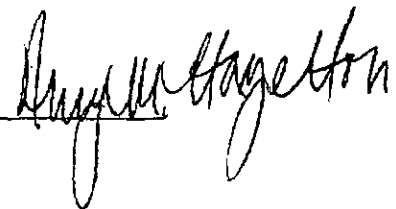
Plash Island Resort, LLC
c/o Joseph F. Yarborough, Jr.
396 West 23rd Avenue
Gulf Shores, Alabama 36542

Christopher Andrew Yarborough
345 Olde Park Court
Gulf Shores, Alabama 36542

The Estate of Gary L. Marcrum, Sr.
C/o Donna S. Marcrum, Executrix
604 Queensgate
Birmingham, Alabama 35242

Marcrum Development, LLC
c/o Debra Marcrum Massey
1601 Wingfield Drive
Birmingham, Alabama 35242

/s/ Amy M. Hazelton
Of Counsel





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CV-2010-902180.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SYNOVUS BANK)	
)	
Plaintiff,)	
)	
v.)	Case No. 2010-902180
)	
PLASH ISLAND RESORT, LLC, et. al.)	
)	
Defendants.)	

MOTION TO CONSOLIDATE RELATED CASES

COMES NOW Plaintiff, Synovus Bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with Coastal Bank and Trust, a Georgia Bank state bank, d/b/a Coastal Bank and Trust ("Synovus" or "Plaintiff") and pursuant to Rule 42 of the Alabama Rules of Civil Procedure, hereby submits this motion ("Motion") seeking to consolidate case number CV-2010-902186 into the above-styled action. In support thereof, Synovus states as follows:

1. Alabama Rule of Civil Procedure 42 provides that "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." ALA. R. CIV. P. 42. "This wording is intended to confer a broad discretion to merge the two actions so far as is necessary for their most convenient determination. . . ." ALA. R. CIV. P. 42 cmt.; *See also 8 James Wm. Moore, Moore's Federal Practice* § 42.10[1][a] (3d ed. 2008) ("The articulated standard for consolidating two or more cases is simply that they involve 'a common question of law or fact.'"); *State v. Reynolds*, 887 So. 2d 848, 852 (Ala. 2004) ("Circuit judges have broad powers under the Alabama Rules of Civil Procedure to order joint hearings or

trials of any or all matters in actions involving a common question of law, to order actions consolidated, to order separate trials of any claim, and to sever and proceed separately with any claim.)

2. The above styled case (the “Plash Island Matter”), and the case styled *Synovus Bank v. Alan Howard, et al.*, CV-2010-902186 (the “Howard Matter”, and together with the Plash Island Matter, the “Synovus Cases”) are two separate cases pending before two separate judges in the Circuit Court of Jefferson County, Alabama, but involve nearly identical questions of law and fact, and common parties.

3. On March 15, 2005, Plash Island Resort, LLC (“Plash Island” or “Borrower”) executed a promissory note, as amended or renewed from time to time, (collectively the “\$5.4 Million Note”) in favor of Synovus pursuant to which Plash Island promised to pay to Synovus the sum of Five Million Four Hundred Thousand and 00/100 Dollars (\$5,400,000.00), plus interest.

4. In order to induce Synovus Bank to enter in the \$5.4 Million Note with the Borrower, the remaining defendants in the above styled case, as well as all three Defendants in the Howard Matter (collectively the “Guarantors”) executed unconditional and continuing guaranty agreements (the “Guaranty Agreements”) whereby the Guarantors guaranteed the prompt payment of the debt owed by Plash Island Resort, LLC to Synovus under the \$5.4 Million Note and related loan documents (“the Loan Documents”).

5. On June 21, 2010, Synovus filed both this action and the Howard Matter asserting virtually identical claims based on virtually identical facts, i.e. breach of guaranty agreements by the Guarantors.